



PATENT
Customer No. 76,191
Attorney Docket No. 10618.0004-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Alain Rambach <i>et al.</i>)	Group Art Unit: 1657
)	
Application No.: 10/528,824)	Examiner: Herbert J. Lilling
)	
Filed: March 23, 2005)	
)	
For: METHOD OF DETECTING)	Confirmation No.: 6976
METHICILLIN-RESISTANT)	
MICROORGANISMS (as)	
amended))	

MAIL STOP RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(b)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(b), Applicant brings to the attention of the Examiner the listed documents on the attached PTO SB/08 Form. This Information Disclosure Statement is being filed concurrently with a Request for Continued Examination.

In the IDS dated March 25, 2009, Applicant provided the Office with the Minutes of the Hearing before the Opposition Division of the European Patent Office for the Opposition of related European Patent No. EP1543147. Applicant also submitted with that IDS a copy of the Decision of the Opposition Division affirming the patentability of claims 1-9 of the Main Request submitted during the Opposition. The two opponents

have now appealed that decision. Opponent Bio-Rad filed its appeal on July 6, 2009.

Applicant provides the following documents pertaining Bio-Rad's appeal:

1. Grounds for Appeal dated July 6, 2009;
2. Declaration by Dr. Christel Neut (English translation provided); and
3. Declaration by Dr. Annie Felten (English translation provided).

The appeal also cites to a number of "newly submitted documents" that include foreign patent documents and nonpatent literature documents. See page 2 of the Grounds for Appeal. Three of those documents, Japanese patent publication no. Hei 06-217760, Lally et al, and Moriyasu et al., have already been provided by Applicant to the Office. The documents not previously provided to the Office are submitted herewith, and are listed on the attached Form PTO/SB/08. English translations of the non-English documents are provided.

Opponent bioMerieux filed its appeal on June 26, 2009. Applicant provides the following documents pertaining bioMerieux's appeal:

1. Grounds for Appeal dated June 25, 2009 (English translation provided);
2. "Evaluation of the impact of adding Oxacillin or Cefoxitin to the CHROMagar Staph aureus medium on the detection of Methicillin-resistant *Staphylococcus aureus*," prepared for the appeal by the R&D Microbiology department of bioMerieux (English translation provided);
3. Declaration of Jean Freney (English translation provided); and
4. Declaration of Gunnar Kahlmeter.

The bioMerieux appeal also cites to a number of documents not previously considered in the Opposition that include foreign patent documents and nonpatent

literature documents. See page 1 of the Grounds for Appeal. One of those documents, Japanese patent publication no. Hei 06-217760 ("JP 6-217760"), has already been provided by Applicant to the Office. The documents not previously provided to the Office are submitted herewith, and are listed on the attached Form PTO/SB/08. English translations of the non-English documents are provided.

In addition, Applicant submits an article by Hiramatsu et al., "Molecular cloning and nucleotide sequence determination of the regulator region of *mecA* gene in methicillin-resistant *Staphylococcus aureus* (MRSA)," FEBS Letters, 298:133-36 (1992), and a communication by counsel for opponent Bio-Rad to the Opposition Division of the European Patent Office dated December 11, 2008. Applicant also provides an English-language translation of the communication. These documents were inadvertently not submitted to the Office within three months of their transmission to the European Patent Office. Therefore, Applicant has filed a Request for Continued Examination to ensure that these documents are considered by the Office.

Applicant requests that the Examiner consider the information submitted herewith, including the documents listed on the attached Form/SB/08. For the latter, Applicant requests that the Office indicate the nonpatent literature documents were considered by making appropriate notations on the attached form.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claim in the application and Applicant determines that the cited documents do not constitute "prior art" under United States law, Applicant

reserves the right to present to the U.S. Patent and Trademark Office the relevant facts and law regarding the appropriate status of such documents.


Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: September 14, 2009

By: 
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Reg. No. 41,225
(571) 203-2718



PATENT
Attorney Docket No. 10618.0004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Alain Rambach <i>et al.</i>) Group Art Unit: 1657
)
Application No.: 10/528,824) Examiner: Herbert J. Lilling
)
Filed: March 23, 2005)
)
For: Method of Detecting Methicillin-Resistant Microorganisms (as amended)) Confirmation No.: 6976
)

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(c)

Under 37 C.F.R. §§ 1.56 and 1.97(c), Applicants bring to the attention of the Examiner the listed documents on the attached form PTO SB/08. This Information Disclosure Statement is being filed after the events recited in Rule 1.97(b) but, to the undersigned's knowledge, before the mailing date of either a Final action, Quayle action, or a Notice of Allowance. Under the provisions of 37 C.F.R. § 1.97(c), this Information Disclosure Statement is accompanied by a fee of \$180.00 as specified by Rule 1.17(p).

Some of the submitted documents were identified to the European Patent Office in an opposition proceeding filed against corresponding European Patent No. EP 1543147 B1.

In addition to the listed documents, Applicants submit the following:

1. Reply to the Opposition Statements submitted April 15, 2008;

2. Comments by opponent Biorad Pasteur submitted July 3, 2008;
3. Preliminary Opinion of the Opposition Division dated August 8, 2008 [original in French, English translation of the substantive comments provided];
4. Reply to Opposition Statements submitted October 16, 2008; and
5. Comments by opponent bioMerieux submitted October 16, 2008 [original in French, English translation provided].

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claim in the application and Applicant determines that the cited documents do not constitute "prior art" under United States law, Applicant reserves the right to present to the U.S. Patent and Trademark Office the relevant facts and law regarding the appropriate status of such documents.


Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to Deposit Account 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: October 28, 2008

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